

REMARKS

Applicants have carefully reviewed the arguments presented in the Office Action and respectfully request entry of its amendments and reconsideration of the claims in view of the remarks presented below.

Claims 30-32 and 36 have been amended, new claim 37 has been added, and claims 1-29 have been cancelled without prejudice. Thus, claims 30-37 are pending in the present application.

The Examiner noted on page 2 of the office action that the current claims are not supported by US Application Serial No. 09/563946, and thus the filing date was 11/9/2000. Applicant respectfully submits that all claims as amended are supported in 09/563946, and indeed are supported by the subject matter of US Provisional Application Serial No. 60/185561, filed 2/28/2000, to which the '946 application and the current application claim priority.

For example, Figs. 1 and 2 of the '561 provisional application disclose a heat exchange catheter (page 38, l. 20), sensing a patient's temperature (page 10, ll. 17-19), determining the temperature of the catheter heat transfer region (page 10, l. 19), providing a controller in communication with the heat transfer catheter via conduits through which circulates a heat exchange fluid, (page 9, ll. 27-page 10, ll. 3), the controller being adapted to elevate or depress the temperature of the catheter heat transfer region relative to the body temperature by removing heat from the heat exchange fluid (page 9, ll. 23-26; page 10, ll. 21-25), selecting a target temperature different than the body temperature (page 10, ll. 15-16), monitoring the temperature differential between the target temperature and the body temperature (page 10, ll. 19-25), and actuating the controller to increase or decrease a rate of heat removal from the heat exchange fluid as a function of the temperature differential between the target temperature and the body temperature (*Id.*).

Similarly, the subject matter of for each of the dependent claims 31-36 are also found in the provisional application at pages 8-10.

The subject matter of new claim 37 is also derived from the provisional application. For example, the provisional application states that a user may manually input data such as a target temperature, or other data such as the actual temperature of the heat exchanger. (Page 10, ll. 11-20.) One skilled in the art would immediately understand that a user could also enter an initial temperature of the catheter heat transfer region because that is one item of data that could be used by the controller to automatically control (Page 38, ll. 26-27) the unit "allowing the operator to essentially dial in a desired temperature and the system will act to reach that target temperature and maintain the patient at that target temperature." (Page 11, ll. 5-8.) The specification clearly states that the TE cooler may be actuated "to increase the amount of heat it is removing . . . or decrease the amount of heat being removed" thus teaching that the rate at which heat may be removed may be varied. (Page 10, ll. 21-25.) Thus, as pointed out by the Examiner at page 3 of the Office Action, where the heat transfer rate varies, one skilled in the art would understand that there must be an initial heat transfer rate, or ramp rate.

For all of the above reasons, Applicants respectfully submit that the proper priority date for the claims of the pending application is the filing date of provisional application 60185561, February 28, 2000.

Claims 30-34, and 36 were rejected under 35 U.S.C. 102(a) as being anticipated by Ginsburg WO 00/10494. Claim 35 was also rejected under 35 U.S.C. 103(a) as being unpatentable over Ginsburg et al. Applicants respectfully transverse these rejections on the basis that priority date of the amended claims is February 28, 2000, which is before the publication date of Ginsburg et al., WO 00/10494. Since Ginsburg et al. was published after the priority date of the pending claims, it is not prior art to those claims.

For all the reasons set forth above, Applicants respectfully submit that the rejections based on or in view of the Ginsburg et al. patent of all claims have been overcome. Accordingly, Applicants request that the rejections be withdrawn and that those claims be allowed.

CONCLUSION

Applicants have carefully reviewed the arguments presented in the Office Action and respectfully request entry of its amendments and reconsideration of the claims in view of the remarks presented. In light of the above amendments and remarks, Applicants respectfully request that a timely Notice of Allowance be issued in this case.

Should the Examiner have any questions concerning the above amendments and arguments, or any suggestions for further amending the claims to obtain allowance, Applicant requests that the Examiner contact Applicant's attorney, John Fitzgerald, at 310-242-2667.

The Commissioner is authorized to credit any overpayment or charge any additional fees in this matter to our Deposit Account No. 06-2425.

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Respectfully submitted,

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